

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

**TALECRIS BIOTHERAPEUTICS, INC. and  
BAYER HEALTHCARE LLC.,**

**Plaintiffs,**

**v.**

**BAXTER INTERNATIONAL INC. and  
BAXTER HEALTHCARE  
CORPORATION,**

**Defendants.**

**Civil Action No. 05-349-GMS**

**Jury Trial Demanded**

---

**BAXTER HEALTHCARE  
CORPORATION,**

**Counterclaimant,**

**v.**

**TALECRIS BIOTHERAPEUTICS, INC.  
and BAYER HEALTHCARE LLC,**

**Counterdefendants.**

**JOINT PROPOSED SPECIAL VERDICT FORM**

We, the jury, unanimously find as follows:

**1. PATENT INFRINGEMENT**

Has Talecris proven by a preponderance of the evidence that Baxter literally infringes claim 7 of United States Patent No. 6,686,191 (“the ‘191 patent”)?

YES (for Talecris)

NO (for Baxter)

\_\_\_\_\_

\_\_\_\_\_

2. **WILLFUL INFRINGEMENT**

Please answer question 2 if you answered YES to question 1.

Question No. 2: Willful Infringement

Has Talecris proven by clear and convincing evidence that Baxter willfully infringed the '191 patent?

YES (for Talecris)

NO (for Baxter)

\_\_\_\_\_

\_\_\_\_\_

3. **INVALIDITY**

No matter how you answered questions 1 and 2, please answer the following questions.

**A. Anticipation**

Question No. 3(a)

Has Baxter proven by clear and convincing evidence that either of the following claims of the '191 patent are invalid because they are anticipated by the prior art?

YES (for Baxter)

NO (for Talecris)

Claim 1 \_\_\_\_\_

\_\_\_\_\_

Claim 7 \_\_\_\_\_

\_\_\_\_\_

Please go on to the next question.

**B. Obviousness**

Question No. 3(b)

Has Baxter proven by clear and convincing evidence that either of the following claims of the '191 patent are invalid because they are obvious?

YES (for Baxter)

NO (for Talecris)

Claim 1 \_\_\_\_\_

\_\_\_\_\_

Claim 7 \_\_\_\_\_

\_\_\_\_\_

Please go on to the next question.

**C. Written Description**

Question No. 3(c)

Has Baxter proven by clear and convincing evidence that either of the following claims of the '191 patent are invalid because they lack written description?

YES (for Baxter)

NO (for Talecris)

Claim 1 \_\_\_\_\_

\_\_\_\_\_

Claim 7 \_\_\_\_\_

\_\_\_\_\_

Please go on to the next question.

**4. INEQUITABLE CONDUCT**

Has Baxter proven by clear and convincing evidence that the '191 patent is unenforceable due to inequitable conduct?

YES (for Baxter)

NO (for Talecris)

\_\_\_\_\_

\_\_\_\_\_

**5. DAMAGES**

If you find that Baxter has infringed claim 7 of the '191 patent, that claim 7 is valid, and that the '191 patent is enforceable, please answer the following questions.

Question No. 5(a)

What amount of damages, if any, has Talecris proven it is entitled to receive from Baxter based on sales of GAMMAGARD® LIQUID from September 26, 2005 to the present date?

\$ \_\_\_\_\_

Question No. 5(b)

**[What reasonable royalty, if any, has Talecris proven by a preponderance of the evidence, for a license that allows Baxter to continue using the '191 patent for the entire life of the patent?]<sup>1</sup>**

\_\_\_\_\_ %

Question No. 5(c)

**[What reasonable royalty, if any, has Talecris proven by a preponderance of the evidence, for a license that allows Baxter to use the '191 patent through the time of trial?]<sup>2</sup>**

---

<sup>1</sup> Baxter objects to the question on alternative royalty rates as contrary to reasonable royalty analysis under *Georgia-Pacific Corp. v. United States Plywood Corp.*, 318 F. Supp. 1116 (S.D.N.Y. 1970) and for the reasons stated in Baxter's Motion In Limine No. 5 (D.I. 251 and 354). Without waiving these objections, if the Court is inclined to give any question to the jury on alternative royalty rates, Baxter agrees to the language as written.

<sup>2</sup> Baxter objects to the question on alternative royalty rates as contrary to reasonable royalty analysis under *Georgia-Pacific Corp. v. United States Plywood Corp.*, 318 F. Supp. 1116 (S.D.N.Y. 1970) and for the reasons stated in Baxter's Motion In Limine No. 5 (D.I. 251 and 354). Without waiving these objections, if the Court is inclined to give any question to the jury on alternative royalty rates, Baxter agrees to the language as written.



\_\_\_\_\_ %

\* \* \*

Each juror must sign this verdict form to reflect that a unanimous decision has been reached.

Dated:

\_\_\_\_\_  
FOREPERSON

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**CERTIFICATE OF SERVICE**

I, Jeffrey B. Bove, hereby certify that on this 9<sup>th</sup> day of July, 2007, I electronically filed the foregoing **Joint Proposed Special Verdict Form** with the Clerk of Court using CM/ECF which will send notification of such filing to the following:

Philip A. Rovner, Esquire  
Potter Anderson & Corroon LLP  
Hercules Plaza  
P.O. Box 951  
Wilmington, DE 19899  
(302) 984-6140  
[provner@potteranderson.com](mailto:provner@potteranderson.com)

Susan Spaeth, Esquire  
Townsend&Townsend&Crew LLP  
379 Lytton Avenue  
Palo Alto, CA 94301-1431  
(415) 576-0200  
[smspaeth@townsend.com](mailto:smspaeth@townsend.com)

I also hereby certify that a true copy of the foregoing document was served upon the following in the matter indicated on July 9, 2007.

**Via Hand Delivery and Email**  
Philip A. Rovner, Esquire  
Potter Anderson & Corroon LLP  
Hercules Plaza  
P.O. Box 951  
Wilmington, DE 19899  
(302) 984-6140  
[provner@potteranderson.com](mailto:provner@potteranderson.com)

**Via FedEx and E-mail**  
Susan Spaeth, Esquire  
Townsend&Townsend&Crew LLP  
379 Lytton Avenue  
Palo Alto, CA 94301-1431  
(415) 576-0200  
[smspaeth@townsend.com](mailto:smspaeth@townsend.com)

/s/ Jeffrey B. Bove  
Jeffrey B. Bove (#998)  
Connolly Bove Lodge & Hutz LLP  
1007 N. Orange Street  
Wilmington, DE 19801  
(302) 658-9141  
[jbove@cblh.com](mailto:jbove@cblh.com)

551364